

THE HONORABLE JOHN C COUGHENOUR

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MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE SEGAL COMPANY (EASTERN
STATES), INC , a New York corporation, and
SIBSON CONSULTING, a division thereof,

Plaintiffs,

vs

AMAZON COM, a Delaware corporation,

Defendant

CIVIL ACTION No CV03-1182C

**DEFENDANT AMAZON.COM'S
MOTION TO DISMISS FRAUD
CLAIM AND FOR PARTIAL
SUMMARY JUDGMENT ON
CONSUMER PROTECTION ACT
CLAIM**

NOTE ON MOTION CALENDAR
JULY 11, 2003
WITHOUT ORAL ARGUMENT

I. INTRODUCTION

1 1 This is – or should be – a simple contract case According to the complaint filed
21 by the Segal Company and its Sibson Consulting division (collectively “Sibson”), Amazon com
22 engaged Sibson to provide consulting services regarding stock option valuation and employee
23 compensation, fired Sibson, and then failed to pay Sibson’s bill for the consulting services
24 Sibson claims to have provided Exhibit A (Complaint) at ¶¶ 8, 11-12



CV 03-01182 #00000006

RAUD CLAIM AND FOR
TECTION ACT CLAIM

ORIGINAL

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTRE
1420 FIFTH AVENUE SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE (206) 903 8800
FAX (206) 903-8820

6

1 1 2 Based on this straightforward dispute, Sibson has brought seven claims against
 2 Amazon com, including (1) misrepresentation/fraud in the inducement and (2) violation of the
 3 Washington Consumer Protection Act ("CPA") There is no reason for Sibson to allege these
 4 claims nor is there any factual or legal basis for doing so. They presumably were included only
 5 in an effort to use this litigation as a settlement cudgel

6 1 3 Neither the fraud claim nor the CPA claim was properly pled, and both should be
 7 dismissed pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) Moreover,
 8 Amazon com should be awarded partial summary judgment on Sibson's CPA claim because, as a
 9 matter of law, the acts alleged by Sibson, even if true, do not have the capacity to deceive a
 10 substantial portion of the public and do not adversely impact the public interest

11 II. POINTS & AUTHORITIES

12 A. Sibson Has Failed To Plead Its Fraud Claim With Particularity

13 2 1 Sibson's fraud claim, in its entirety, is that "Amazon com made material
 14 misrepresentations to plaintiff as to the nature of work to be performed, the scope and duration of
 15 the consulting project it awarded to plaintiff, and its intent to fully compensate plaintiff for work
 16 performed[.]" that "Plaintiff relied on Amazon com's misrepresentations to its detriment[.]" and
 17 that "[a]s a direct and proximate result of Amazon com's misrepresentations, plaintiff has been
 18 damaged in an amount to prove at trial " Exhibit A (Complaint) at ¶¶ 35-37

19 2 2 "In Washington, as in many jurisdictions, the presumption of innocence of fraud
 20 is almost as strong as 'the presumption of innocence of crime.'" Asheim v Pigeon Hole
 21 Parking, Inc., 175 F Supp 320, 328 (E D Wash 1959), aff'd, 283 F 2d 288 (9th Cir 1960)
 22 Therefore, fraud is not to be presumed, and to establish fraud, Sibson must prove all of its
 23 essential elements (1) a representation of an existing fact, (2) its materiality, (3) its falsity, (4)
 24 the speaker's knowledge of its falsity; (5) his intent that it shall be acted upon by the person to
 25 whom it is made, (6) ignorance of its falsity on the part of the person to whom the representation

1 is addressed, (7) the latter's reliance on the representation, (8) his right to rely upon it, and (9)
 2 his consequent damage Stiley v Block, 130 Wn 2d 486, 505, 925 P 2d 194 (1996)

3 23 Sibson is required to plead "the circumstances constituting fraud with
 4 particularity" Fed R Civ P 9(b) It is not adequate for Sibson to simply "plead the 'facts
 5 necessary to identify the transaction'" Yourish v. California Amplifier, 191 F 3d 983, 994 (9th
 6 Cir. 1999) (affirming district court's dismissal of complaint for failure to plead fraud with
 7 sufficient particularity) If this were all that were required, "it would collapse Rule 9(b) into
 8 Rule 8(a)" Id "But Rule 9(b) clearly imposes an *additional* obligation on plaintiffs the
 9 statement of the claim must *also* aver with particularity the circumstances surrounding the
 10 fraud" In re Glenfed, Inc Sec Litig., 42 F 3d 1541, 1547 (9th Cir 1994) (en banc) (emphasis
 11 original) In fact, Sibson must plead its fraud claim "with a high degree of meticulousness"
 12 Desaigoudar v Meyercord, 223 F 3d 1020, 1022 (9th Cir. 2000) (affirming district court's
 13 dismissal of complaint with prejudice after plaintiff failed for the third time to plead fraud with
 14 sufficient particularity)

15 24 The Ninth Circuit has interpreted the "particularity" requirement to mean that a
 16 plaintiff alleging fraud "must state the *time, place* and *specific content* of the false
 17 representations as well as the *identities* of the parties to the misrepresentation" Miscellaneous
 18 Serv Workers, Drivers & Helpers, Teamsters Local #427 v Philco-Ford Corp., 661 F.2d 776,
 19 782 (9th Cir 1981) (emphasis added) (affirming district court's dismissal of fraud claim for
 20 failure to plead with sufficient particularity) Additionally, "[t]he plaintiff must set forth *what is*
 21 *false* or misleading about a statement, and *why it is false* In other words, the plaintiff must set
 22 forth an explanation as to why the statement or omission complained of was false or misleading"
 23 In re Glenfed, Inc Sec Litig., 42 F 3d at 1548 (emphasis added) Recently, this Court explained
 24 that, "[g]enerally, a complaint asserting fraud must *adequately specify the statements* it claims
 25 are false or misleading, *give particulars* as to the respect in which plaintiff contends the

statements are fraudulent, *state when and where* the statements were made, and *identify those responsible* for the statements. The plaintiff also 'must set forth *what is false or misleading* about a statement and *why it is false*.'" Fid Mortgage Corp v Seattle Times Co., 213 F.R.D. 573, 575 (W.D. Wash. 2003) (Coughenour, C.J.) (citation omitted) (emphasis added) (dismissing claims grounded in fraud for failure to plead them with sufficient particularity).

2.5 Sibson does not "specify the statements it claims are false or misleading," does not "give particulars as to the respect in which [Sibson] contends the statements are fraudulent," does not "state when and where the statements were made," does not "identify those responsible for the statements," does not "set forth what is false or misleading" about each statement, and does not state "why it is false," each of which is a requirement identified by this Court for pleading a fraud claim with sufficient particularity. See id.

2.6 Inserting frivolous "fraud" claims into an ordinary contract case is not a responsible use of the federal district courts. The pleading requirements of Rule 9(b) protect defendants such as Amazon.com from having to defend against baseless fraud allegations in what should be a straightforward contract dispute. Sibson's fraud claim should be dismissed for failure to plead allegations of fraud with particularity.

B. Sibson Has Failed To Plead Its CPA Claim With Particularity

2.7 Sibson's CPA claim, in its entirety, is that "[o]n information and belief, Amazon.com engages in a pattern and practice of refusing to pay consultants and other independent contractors for work performed for Amazon.com[,]" that "[o]n information and belief, Amazon.com's actions constitute deceptive acts or practices occurring the [sic] course of trade or practice of commerce, and impact the public interest, in violation of the Washington Consumer Protection Act, RCW 19.86[.]" and that "Plaintiff has been damaged by Amazon.com's actions in an amount to be proven at trial." Exhibit A (Complaint) at ¶¶ 13, 39-40 (emphasis added). Thus, Sibson's CPA claim is based on the same dubious theory as its fraud

claim: Amazon.com hires consultants and contractors to do work, intending not to pay them. Because Sibson's CPA claim is "grounded in fraud," Sibson is required to plead this claim with particularity as well. Fid Mortgage Corp., 213 F.R.D. at 575 (dismissing CPA claim based on plaintiff's failure to plead with particularity). Sibson cannot plead its CPA claim "on information and belief," as it has done Weaver v. Chrysler Corp., 172 F.R.D. 96, 100 (S.D.N.Y. 1997) (holding that plaintiff failed to plead a cause of action under New York CPA "because his allegations are based upon 'information and belief'"). If the Court does not award Amazon.com partial summary judgment on Sibson's CPA claim, as discussed below, it should, at minimum, dismiss that claim based on Sibson's failure to plead it with particularity.

C. Amazon.com Should Be Awarded Partial Summary Judgment On Sibson's CPA Claim

28 A defendant may move for summary judgment "at any time[.]" Fed. R. Civ. P. 56(b). To survive summary judgment on its CPA claim, Sibson must present admissible evidence that acts by Amazon.com (1) were unfair or deceptive, (2) occurred in the conduct of trade or commerce, (3) affected the public interest, and (4) caused (5) injury to Sibson's business or property. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986). If Sibson fails to present evidence supporting any one of these elements, its CPA claim should be dismissed. Robinson v. Avis Rent A Car Sys., Inc., 106 Wash. App. 104, 114, 22 P.3d 818 (2001). Sibson cannot present evidence supporting at least two of these elements: (1) unfair or deceptive acts, and (2) public interest. In fact, Sibson has resorted to pleading them "[o]n information and belief[.]" Exhibit A (Complaint) at ¶ 39. Whether a particular act or practice gives rise to a CPA violation is an issue of law. Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

1 **1. The Acts Alleged By Sibson Are Not Unfair Or**
 2 **Deceptive**

3 2 9 Alleged improper conduct, even if it may be actionable under other theories of
 4 law, does not necessarily violate the CPA. For conduct to be an “unfair or deceptive” practice
 5 under the CPA, it must have the capacity “to deceive a substantial portion of the *public*”
 6 Hangman Ridge, 105 Wn 2d at 785 (emphasis added). The CPA was enacted for the “ultimate
 7 benefit of the *consumer*[]” State v Black, 100 Wn 2d 793, 799, 676 P 2d 963 (1984) (emphasis
 8 added).

9 2 10 Washington law does not support plaintiff’s claim. In Goodyear Tire & Rubber
 10 Co v Whiteman Tire, Inc., 86 Wash App 732, 935 P 2d 628 (1997), for example, a tire dealer
 11 claimed that Goodyear had (1) falsely represented that it would not compete directly with
 12 Goodyear dealers in Washington, (2) threatened those dealers with increased competition if they
 13 sold non-Goodyear tires or did not expand according to Goodyear’s demands, and (3)
 14 manipulated market data to deceive those dealers as to their financial risks in expanding their
 15 operations. Despite the plaintiff’s argument that Goodyear’s conduct affected all Goodyear
 16 dealers in Washington, the Court of Appeals upheld the trial court’s dismissal of the CPA claim
 17 on summary judgment, holding that Goodyear’s alleged conduct did not constitute “unfair or
 18 deceptive acts” because it “*was not directed at the public*” Id at 744 (emphasis added).

19 2 11 Similarly, in Henery v Robinson, 67 Wash App 277, 834 P 2d 1091 (1992), the
 20 Court of Appeals upheld a judgment rescinding a mobile home sale for breach of warranty, but
 21 reversed liability under the CPA on the ground that the defendant’s conduct was not “unfair or
 22 deceptive” – even though the plaintiffs were consumers. The Court concluded: “Mrs Henery
 23 has not shown how the statements made to her by Robinson, no matter how misleading, *have the*
 24 *capacity to deceive a substantial portion of the public*” Id at 291 (emphasis added).

25 2 12 Even in the rare cases where courts have found in favor of non-consumer
 plaintiffs under the CPA, a showing of the conduct’s affect on consumer interests has been a

prerequisite See, e.g., Northwest Airlines v. The Ticket Exch., Inc., 793 F. Supp. 976, 979 (W.D. Wash. 1992) (although Northwest Airlines was not the ultimate consumer, misrepresentations to customers regarding frequent flyer tickets justifies CPA action by airline), Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn 2d 299, 313, 858 P 2d 1054 (1993) (physician plaintiff who prescribed patient medications was "comparable to the ordinary consumer in other settings"), Nordstrom, Inc. v. Tampourlos, 107 Wn 2d 735, 740, 733 P 2d 208 (1987) (although Nordstrom was not the ultimate consumer, misappropriation of Nordstrom's name "tends to and does deceive" consumers)

2.13 Even if Sibson's allegations were true – that Amazon.com has failed to pay Sibson and other consultants and contractors for work performed – these actions would not have the capacity "to deceive a substantial portion of the public." Hangman Ridge, 105 Wn 2d at 785. Therefore, Sibson's allegations cannot give rise to a CPA claim, and that claim should be dismissed.

2. The Acts Alleged By Sibson Do Not Affect The Public Interest

2.14 The Legislature specifically stated that its intent was that the CPA "shall not be construed to prohibit acts or practices which are not injurious to the public interest[.]" RCW 19.86.920. Therefore, Washington is one of a small minority of states that imposes a public interest requirement on a private action under its CPA. Hangman Ridge, 105 Wn 2d at 787-89.

2.15 "Ordinarily, a breach of a private contract affecting no one but the parties to the contract is not an act or practice affecting the public interest." Id. at 790. For private disputes, the following factors determine whether alleged conduct affects the public interest: (1) whether the alleged acts were committed in the course of defendant's business, (2) whether the defendant advertised to the general public, (3) whether the defendant actively solicited the particular plaintiff, thereby indicating potential solicitation of others; and (4) whether or not the parties occupy positions of equal bargaining power. Id. at 790-91. Alternatively, the public interest

1 element may be satisfied where “there is a ‘specific legislative declaration’ of a public
2 interest[.]” Id. at 791

3 2 16 In elaborating on these factors, courts have set forth two limiting principles that
4 guide the public interest inquiry in private disputes such as this one. First the private claimant
5 must prove “a pattern or generalized course of conduct” and “a real and substantial potential for
6 repetition of defendant’s conduct after the act involving plaintiff” Eifler v Shurgard Capital
7 Mgmt Corp., 71 Wash App 684, 697, 861 P 2d 1071 (1993) Mere speculation of repeated
8 conduct will not suffice to show a potential for repetition Aubrey’s R V Ctr. v Tandy Corp., 46
9 Wash. App 595, 610, 731 P 2d 1124 (1987) (holding that there was no showing of public
10 interest where “[n]o other consumers were affected by the conduct”) Second, regardless of the
11 potential for repetition, the CPA does not apply to experienced businesspersons involved in
12 private transactions unless real consumer or public impact exists, because such persons are “not
13 representative of bargainers subject to exploitation and unable to protect themselves” Hangman
14 Ridge, 105 Wn 2d at 794

15 2 17 Washington law supports the application of these principles In Hangman Ridge,
16 for example, the Washington Supreme Court found no public interest impact from the
17 unauthorized practice of law by an escrow agent, in part because “the plaintiffs had a history of
18 business experience,” they had “retained an attorney and an accountant on a regular basis,” and
19 they were “not representative of bargainers subject to exploitation and unable to protect
20 themselves” Hangman Ridge, 106 Wn 2d at 794 In Goodyear, the court found no public
21 interest impact (despite plaintiffs’ showing that other dealers had been harmed) because the
22 “transaction was a private dispute,” involved “an experienced businessman who had dealt with
23 Goodyear for years,” and Goodyear dealers were “persons whose experience indicated they were
24 better able than the average consumer to judge for themselves the risks associated with
25 Goodyear’s proposals” Goodyear, 86 Wash App at 745 In Reeves v Teuscher, 881 F.2d

1 1495 (9th Cir. 1989), the Ninth Circuit reversed a judgment of CPA liability for an experienced
 2 real estate investor, while simultaneously affirming CPA judgments for 12 other
 3 “unsophisticated investors,” on the grounds that the experienced investor “had ten to 15 years of
 4 experience in selling and developing” real estate, the defendants “did not advertise” or “solicit”
 5 the investor, and the defendants “did not occupy a superior bargaining position.” Reeves, 881
 6 F 2d at 1497, 1503. In Pacific Northwest Life Insurance Co v Turnbull, 51 Wash App 692,
 7 754 P 2d 1262 (1988), the court found no public interest impact because the plaintiffs, a
 8 corporation and an individual, “had sufficient sophistication to remove them from the class of
 9 bargainers subject to exploitation.” Pac Northwest, 51 Wash. App. at 703

10 2.18 Sibson describes itself as “a corporation organized under the laws of the State of
 11 New York” which “specializ[es] in the development and implementation of personnel
 12 strategies.” Exhibit A (Complaint) at ¶¶ 1, 5. Its dispute with Amazon.com simply is not a CPA
 13 case. Rather, it is a purely private dispute between two corporations that cannot avail themselves
 14 of the *consumer* and *public* protections afforded by the CPA.

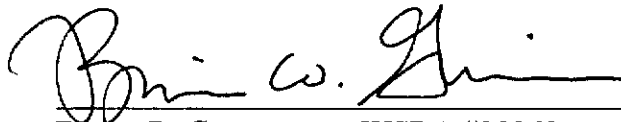
15 III. CONCLUSION

16 3.1 Before filing this motion, Amazon.com’s counsel requested that Sibson withdraw
 17 its fraud and CPA claims, as “Amazon.com should not have to incur the expense of litigating
 18 such claims, and the Court should not have to expend the time necessary to resolve them.”
 19 Exhibit C (Goodnight’s June 3, 2003 Letter). Counsel also requested that Sibson’s discovery
 20 requests be withdrawn, as they were served before the initial conference of counsel, in violation
 21 of Federal Rule of Civil Procedure 26(d). See Exhibit B (Discovery Requests). Counsel for
 22 Sibson acknowledged that the discovery requests were improper, stating that they were sent as a
 23 “roadmap” only, but refused to withdraw them and indicated that he was “look[ing] forward to
 24 Amazon.com’s answer to the complaint.” Exhibit D (Sulkin’s June 3, 2003 Letter)

3.2 Sibson's response left Amazon.com with two alternatives. Amazon.com could incur the expense of litigating these frivolous claims, including discovery, or Amazon.com could incur the expense of bringing this motion to dismiss. Neither alternative is reasonable. These claims never should have been alleged. This is – or should be – a straightforward case about whether one corporate party breached a contract with another corporate party, or, alternatively, whether one of them is entitled to recover under a promissory estoppel or quantum meruit theory in the absence of a contract. It is not a case about fraud. It is not a case about consumers. And the federal district courts should not be used in an effort to leverage settlements after asserting frivolous claims, coupled with improper discovery. Sibson's fraud and CPA claims should be dismissed.

DATED this 13th day of June, 2003

DORSEY & WHITNEY LLP



DAVID R. GOODNIGHT, WSBA #20268

BRIAN W. GRIMM, WSBA #29619

U.S. Bank Centre

1420 Fifth Avenue, Suite 3400

Seattle, WA 98101-4010

Telephone (206) 903-8800

Facsimile (206) 903-8820

Attorneys for Defendant,

Amazon.com

DECLARATION OF BRIAN W. GRIMM

Brian W Grimm declares as follows

1 I am an attorney at Dorsey & Whitney LLP, counsel for Amazon com The
2 following is based on personal knowledge, unless otherwise indicated, and I am competent to
3 testify thereto

4 2 Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Complaint
5 for Damages and Equitable Relief, which was received by Amazon com on or about May 27,
6 2003

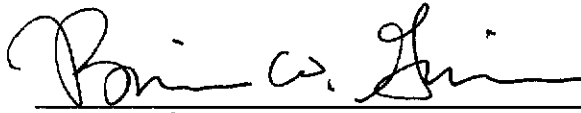
7 3 Attached hereto as Exhibit B is a true and correct copy of Plaintiff's First
8 Interrogatories and Requests for Production Propounded to Defendant, which was received by
9 Amazon com on or about May 27, 2003

10 4 Attached hereto as Exhibit C is a true and correct copy of a letter that David R
11 Goodnight, a partner at Dorsey & Whitney LLP and lead counsel for Amazon com, sent to
12 Plaintiff's counsel, Robert M Sulkin, dated June 3, 2003

13 5 Attached hereto as Exhibit D is a true and correct copy of a letter that Mr
14 Goodnight received from Mr Sulkin, dated June 3, 2003

15 6 The foregoing is true and correct to the best of my knowledge and belief under
16 penalty of perjury under the laws of Washington and the United States

17
18
19
20 DATED this 13th day of June, 2003, at Seattle, Washington

21 
22 Brian W Grimm

PROOF OF SERVICE

On the date below, I caused to be delivered by personal service a true copy of the foregoing **DEFENDANT AMAZON.COM'S MOTION TO DISMISS FRAUD CLAIM AND FOR PARTIAL SUMMARY JUDGMENT ON CONSUMER PROTECTION ACT CLAIM** to

Robert M Sulkin
McNaul Ebel Nawrot Helgren & Vance
600 University Street, Suite 2700
Seattle, Washington 98101-3143

DATED this 13th day of June, 2003



Leshe D Teves

DEFENDANT AMAZON COM'S MOTION TO DISMISS FRAUD CLAIM AND FOR
PARTIAL SUMMARY JUDGMENT ON CONSUMER PROTECTION ACT CLAIM

-12-
CV03-1182C

DORSEY & WHITNEY LLP
U S BANK BUILDING CENTRE
1420 FIFTH AVENUE SUITE 3400
SEATTLE, WASHINGTON 98101
PHONE (206) 903-8800
FAX (206) 903-8820

EXHIBIT A

Hon.

FILED
LONGED
ENTERED
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★ MAY 21 2003 ★
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE SEGAL COMPANY (EASTERN
STATES), INC., a New York corporation,
and SIBSON CONSULTING, a division
thereof,

Plaintiff,

v

AMAZON.COM, a Delaware corporation,
Defendant.

No.

Cv 03 1182

COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF

COMES NOW the plaintiff, THE SEGAL COMPANY (EASTERN STATES),
INC., and SIBSON CONSULTING, a division thereof, and alleges as follows.

I. PARTIES

1. Plaintiff The Segal Company (Eastern States), Inc. ("Segal"), is a
corporation organized under the laws of the State of New York. Sibson Consulting
("Sibson") is a division of The Segal Company. Segal and Sibson's principal place of
business is in New York.

2. Defendant Amazon.com is a corporation organized under the laws of the
State of Delaware, with its principal place of business in Seattle, Washington

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF
[NO. _____] - Page 1

COPY

LAW OFFICES OF
MCNAUL EBEL NAWROT HELGREN
& VANCE, P.L.L.C.
600 University Street Suite 2700
Seattle Washington 98101-3143
(206) 467-1816

II. JURISDICTION AND VENUE

3 This Court has jurisdiction over the subject matter of this action pursuant to
28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in
controversy exceeds \$75,000.

4 Venue is proper in this district under 28 U.S.C. § 1391(a) because
defendant resides and/or has its principal place of business in this District and because a
substantial part of the events or omission giving rise to the claims alleged herein occurred
in this District

III. FACTS

5 Sibson is a consulting firm specializing in the development and
implementation of personnel strategies

6 In mid-June 2002, Amazon.com contacted Sibson to discuss having Sibson
provide consulting services to Amazon.com

7 On July 1, 2002, Sibson presented a consulting services proposal to
Amazon.com regarding stock option valuation and employee compensation. Sibson
estimated monthly fees and costs of \$150,000 to \$300,000 to complete the work proposed
in the abbreviated time frame established by Amazon.com.

8 Amazon.com engaged Sibson to perform the consulting contract. Over the
next several weeks, Amazon.com repeatedly redefined and expanded the consulting tasks
it wanted Sibson to perform, causing a substantial increase in Sibson's work.

9 Sibson devoted substantial resources to the Amazon.com project and
provided Amazon.com with various recommendations and proposals, as well as
frameworks and transition plans for their implementation

10 Sibson regularly advised Amazon.com representatives of its accrued fees
and costs

1 11. On or about August 12, 2002, before Sibson completed the consulting
2 project but after it had completed substantial amounts of work for Amazon.com,
3 Amazon.com advised Sibson that it no longer wanted Sibson to work on the compensation
4 project.

5 12. To date and despite repeated demands, Amazon.com has not made
6 payment to Sibson for the consulting services it rendered or for the costs it incurred. The
7 total of the unreimbursed fees and costs owed by to Amazon.com to Sibson exceeds
8 \$390,000, plus interest

9 13. On information and belief, Amazon.com engages in a pattern and practice
10 of refusing to pay consultants and other independent contractors for work performed for
11 Amazon.com

12 IV. CAUSES OF ACTION

13 Count 1: Unjust Enrichment/ Quantum Meruit

14 14 Plaintiff incorporates by reference the allegations in paragraphs 1 through
15 14.

16 15 Plaintiff provided services to and conferred benefits upon Amazon.com,
17 which services and benefits Amazon.com retained without paying plaintiff for their value

18 16. Amazon.com has been unjustly enriched by the services and benefits
19 provided to it by plaintiff

20 17. Plaintiff is entitled to recover from Amazon.com a reasonable sum for the
21 work it performed, in an amount to be proved at trial.

22 Count 2: Breach of Implied Contract

23 18 Plaintiff incorporates by reference the allegations in paragraphs 1 through
24 17.

25 19 Plaintiff performed services and provided benefits to Amazon.com under
26 circumstances indicating that it expected to be paid for its services

1 20. Amazon.com expected, or should have expected, that it would be required
2 to pay plaintiff for its services.

3 21. Amazon.com's actions constitute a breach of its implied contract with
4 plaintiff.

5 22. Plaintiff has been damaged by that breach in an amount to be proved at
6 trial.

7 **Count 3: Breach of Express Contract**

8 23. Plaintiff incorporates by reference the allegations in paragraphs 1 through
9 22.

10 24. Amazon.com's actions constitute a breach of its contract with plaintiff.

11 25. Plaintiff has been damaged by that breach in an amount to be proved at
12 trial.

13 **Count 4: Breach of Duty of Good Faith and Fair Dealing**

14 26. Plaintiff incorporates by reference the allegations in paragraphs 1 through
15 25.

16 27. By failing to adhere to its contractual obligations and other wrongful acts,
17 Amazon.com has breached the duty of good faith and fair dealing that inheres in every
18 contract.

19 28. Plaintiff has been damaged by that breach in an amount to be proved at
20 trial.

21 **Count 5: Promissory Estoppel**

22 29. Plaintiff incorporates by reference the allegations in paragraphs 1 through
23 28.

24 30. Amazon.com promised to fully compensate plaintiff for services it
25 performed at Amazon.com's request and for Amazon.com's benefit.
26

31. Amazon.com made that promise with the expectation that plaintiff would rely upon it in performing services for Amazon.com, and plaintiff did so rely.

32. Amazon.com has breached its promise to plaintiff.

33. Plaintiff has been damaged by Amazon.com's breach in an amount to be proved at trial

Count 6: Misrepresentation/Fraud in the Inducement

34. Plaintiff incorporates by reference the allegations in paragraphs 1 through 33.

35. Amazon.com made material misrepresentations to plaintiff as to the nature of work to be performed, the scope and duration of the consulting project it awarded to plaintiff, and its intent to fully compensate plaintiff for work performed

36. Plaintiff relied on Amazon.com's misrepresentations to its detriment.

37. As a direct and proximate result of Amazon.com's misrepresentations, plaintiff has been damaged in an amount to be proved at trial.

Count 7: Violation of the Washington Consumer Protection Act

38. Plaintiff incorporates by reference the allegations in paragraphs 1 through 37.

39. On information and belief, Amazon.com's actions constitute deceptive acts or practices occurring the course of trade or practice of commerce, and impact the public interest, in violation of the Washington Consumer Protection Act, RCW 19.86

40. Plaintiff has been damaged by Amazon.com's actions in an amount to be proved at trial.

1 **V. RIGHT TO ADD ADDITIONAL CLAIMS**

2 Plaintiff reserves the right to amend its complaint and add additional claims as
3 discovery warrants.

4 **VI. PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff seeks the following relief against defendant:

6 A Restitution of the amount by which Amazon.com has been unjustly
7 enriched, including a reasonable amount for the work performed by plaintiff,

8 B An award of actual damages in an amount to be proved at trial;

9 C. An award of consequential damages, including lost profits, in an amount to
10 be proved at trial;

11 D An award of all other damages proximately caused by Amazon.com's
12 conduct;

13 E. For plaintiff's reasonable attorney fees and litigation costs, to the extent
14 permitted by equity and by law, including but not limited to RCW 19.86.090,

15 F. An award of exemplary damages pursuant to RCW 19.86.090,

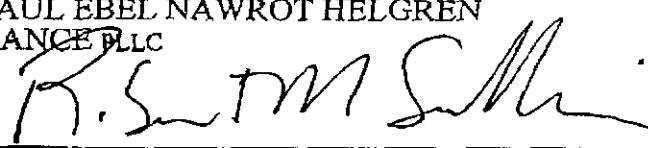
16 G. An award of prejudgment interest to the fullest extent allowed by law, and

17 H. For such other and further legal and equitable relief as the Court may deem
18 just and proper.

19 DATED this 22nd day of May, 2003.

20 McNAUL EBEL NAWROT HELGREN
21 & VANCE PLLC

22 By


Robert M. Sulkin, WSBA No. 15425

23 Attorneys for Plaintiff
24
25
26

EXHIBIT B

RECEIVED

MAY 27 2003

Hon. John C. Coughlin
AMAZON.COM, INC
LEGAL DEPARTMENTUNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLETHE SEGAL COMPANY (EASTERN
STATES), INC., a New York corporation,
and SIBSON CONSULTING, a division
thereof,

Plaintiff,

v

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

No. CV03-1182C

PLAINTIFF'S FIRST
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO DEFENDANT

TO. AMAZON.COM, INC., Defendant

AND TO ITS ATTORNEYS OF RECORD

Plaintiff The Segal Company (Eastern States), Inc. and Sibson Consulting, a
division thereof (hereinafter "Sibson"), pursuant to Fed. R. Civ. P. 33 and 34, requests that
defendant, Amazon.com, Inc. ("Amazon") respond to the following interrogatories and
requests for production.

Pursuant to Fed. R. Civ. P. 33, you are being served with the original of the
interrogatories. To facilitate preparation of answers and responses, plaintiff will
additionally provide an electronic copy of the document to defendant by electronic mail at

PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO DEFENDANT
[No. CV03-1182C]- Page 1LAW OFFICES OF
MCNAUL EBEL NAWROT HELGREN
& VANCE, P.L.L.C.
600 University Street, Suite 2700
Seattle, Washington 98101-3143
(206) 467-1816

1 defendant's request. Please insert your answers on the original in the space provided
2 following each request, or use additional pages if necessary. Please serve the completed
3 original on the undersigned. Each interrogatory is to be answered fully and separately, in
4 writing and under oath, within thirty (30) days of service upon you.

5 Pursuant to Fed R Civ P. 34, plaintiff further requests that defendant, within 30
6 days of the service hereof, produce for inspection and copying the documents described
7 below at the offices of McNaul Ebel Nawrot Helgren & Vance, P L.L.C., One Union
8 Square, 600 University Street, Suite 2700, Seattle, Washington 98101.

9 **INSTRUCTIONS AND DEFINITIONS**

10 The following definitions and instructions are intended to supplement those set
11 forth in the Local Civil Rules, and are not intended to broaden such definitions and
12 instructions

13
14 A These interrogatories and requests for production are intended to be a
15 continuing obligation upon defendant to furnish all information requested herein until
16 final disposition of this case. Corrections and supplemental responses are required as
17 provided for in the Rules of Civil Procedure. **Plaintiff will move the Court to exclude**
18 **the testimony of any person not identified or evidence not disclosed in answers to**
19 **these interrogatories, and will move to dismiss any claims related to any requested**
20 **documents within the possession, custody or control of plaintiff that defendant fails**
21 **to produce or to identify individually on a privilege log in response to these requests,**
22 **and will move to exclude any other evidence offered by defendant related to such**
23 **documents.**
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1 B. These requests seek documents in the possession, custody or control of
2 defendant, including (by way of example and not limitation) documents in the possession
3 of plaintiff's current and former attorneys, agents, accountants, appraisers and employees
4

5 C. In responding to each request for production, if you do not produce a
6 document in whole or in part because you are unable to do so, or for any other reason, you
7 are requested to state the name and address of each person whom you believe has custody,
8 possession or control of the document.

9 D. Objections and claims of privilege should not be made in a general, blanket
10 fashion. Rather, defendant must indicate which objections or claims of privilege are
11 asserted with regard to each discovery request. If only part of a discovery request is
12 objected to, defendant should indicate which objections or claims of privilege are asserted
13 with regard to each such part.
14

15 E. With regard to attorney-client privilege and work product doctrine
16 objections to interrogatories, describe the factual basis for your claim of privilege,
17 including relevant dates, persons involved in the communication, subject matters
18 involved, all persons present when the communications occurred, all persons who have
19 been told about any of the details of the communication and other information which
20 would permit the Court to adjudicate the validity of the claim of privilege
21

22 F. With regard to each document withheld upon a claim of attorney-client
23 privilege or work product doctrine, prepare a document-by-document privilege log stating
24 the type of document (i.e. letter, memorandum, notes, etc), date, preparer, intended
25 recipient(s), subject matter(s) and persons who have received the document or have been
26 told about the contents thereof, and other information which would permit the Court to

1 adjudicate the validity of the claim or privilege. This privilege log must be produced
2 contemporaneously with the documents produced in response to these requests.

3 G. If you object in part to any request for production, please respond to the
4 remainder completely

5
6 H. In responding to each request for production, please identify by number
7 each and every request to which the documents are responsive.

8 I. All documents should be produced in the same order as they are kept or
9 maintained by you in the ordinary course of business and in the manual, booklet, binder,
10 file, folder, envelope or other container in which they are ordinarily kept or maintained. If
11 for any reason the container cannot be produced, produce copies of all labels or other
12 identifying markings thereon.

13
14 J The term "documents" or "records" are intended to be interchangeable and
15 to be construed in their broadest sense including, but not limited to any original, recorded,
16 or graphic matter (handwritten, typed, computer generated or otherwise produced) and all
17 non-identical copies of each such writing (whether different from the original because of
18 notes made on such copy or otherwise), including but not limited to: reports, drafts,
19 working papers, records, files, memoranda, invoices, correspondence, e-mail, drawings,
20 schedules, cost sheets and quotation forms, bids, computer-generated and mechanically-
21 created records, laser disks, compact disks, quotations, transcriptions of telephone
22 conversations, notes, diaries, printouts, photographs, movies, mechanical or sound
23 recordings or transcripts thereof, videotape, letters and all enclosures thereto, telegrams,
24 tape recordings, transmittal documents, rough letters, revisions, superseded documents,
25 telexes, scratch papers, notebooks, notices, purchase orders, contracts, bills of lading,
26

1 amendments, modifications, revisions, agreements, bills, estimates, statements of account,
2 claims, specifications, logs, journals, work orders, charge orders, vouchers, registers, and
3 all other manner and form of communication not otherwise expressly described.

4 As noted, the terms "documents" or "records" include, among other
5 information, information stored in machine-readable form. In determining where
6 responsive documents in this form might be located, consider whether you have any
7 equipment or media which contain "documents" as defined herein, including but not
8 limited to.

9
10 a. Desktop personal computers (PCs) or workstations; PCs,
11 workstations, minicomputers, or mainframes used as file servers, application servers, or
12 electronic mail servers; other minicomputers and mainframes, laptop, notebook, and other
13 portable computers, and home computers used for work-related purposes

14
15 b Backup disks and tapes, archival disks and tapes, and other forms of
16 offline storage, whether stored on-site with the computers used to generate them or off-
17 site in another computer facility or by a third party, and

18 c. Electronic mail messages, even if available only on backup or
19 archive disks or tapes.

20
21 K. Except as otherwise specified herein, provide responsive machine-readable
22 information in its original format. All databases should be in either MS Excel or MS
23 Access. All other files should be in MS Office format, preferably 97. All e-mail should be
24 faxed into a PST file to be read by MS Outlook. All data should be burned to CD-ROM. If
25 you have any questions concerning what constitutes an appropriate format, please contact
26 defense counsel

1 L. Unless otherwise specified herein, the term "computer" includes but is not
2 limited to desktop PCs, workstations, minicomputers, or mainframes used as file servers,
3 application servers, or electronic mail servers; other minicomputers and mainframes,
4 laptop, notebook, and other portable computers; and home computers used for work-
5 related purposes

6
7 M. As used herein, the term "backup" includes but is not limited to backup
8 disks and tapes, archival disks and tapes, and other forms of offline storage, whether
9 stored on-site with the computers used to generate them or off-site in another computer
10 facility or by a third party

11 N As used herein, the phrase "describe" means to set out every aspect of
12 every fact, circumstance, act, omission, or course of conduct known to you relating in any
13 way to the matter inquired about, including, without limitation, the date and place thereof,
14 the identity of each person present, connected therewith, or who has knowledge thereof,
15 the identity of all documents relating thereto, and if anything was said by any person, the
16 identity of each such person and each such oral statement, and if the oral statement in
17 whole or in part was contained, reported, summarized or referred to in any documents, the
18 identity of each such document.

19
20 O The term "person" means any individual, partnership, corporation, firm,
21 association or other business or legal entity.

22
23 P The terms "and" and "or" wherever used herein shall be understood in both
24 the conjunctive and disjunctive sense, synonymous with "and/or."

25 Q. The terms "any" and "all" wherever used herein shall be understood in
26 their most inclusive sense, synonymous with "any or all."

1 R. The terms "you", "defendant" and "Amazon" whenever used herein shall
2 be understood to mean defendant, Amazon com, Inc , including its present and former
3 employees and agents.

4 S The terms "Segal" and "Sibson" shall mean plaintiff, The Segal Company
5 (Eastern States), Inc., and Sibson Consulting, a division thereof, and their present and
6 former agents, officers, directors and employees

7 T. "Identity" or "identify" means.

8 (1) when used with reference to a natural person, to state his or her full
9 name, his or her present home address, present business address, present home and
10 business telephone numbers, present or last known position including job title, and
11 business affiliation.

12 (2) when used in reference to any entity, such as a partnership, joint
13 venture, trust, or corporation, to state the full legal name of such entity, each name under
14 which such entity does business, the entity's street address, the entity's telephone number,
15 the identity of the chief operating officer, manager, trustee or other principal
16 representative and the identity of those persons employed by or otherwise acting for such
17 entity who are known or are believed to possess the knowledge or information responsive
18 to the interrogatory and for which the entity was identified.

19 (3) when used with reference to documents, to state specifically

20 (a) the type of documents involved (e g , letter, interoffice
21 memorandum, etc), together with information sufficient to enable plaintiff to
22 locate the document, such as its date, the name of any addressee, the name of any
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1 signer, the title or heading of the documents and its approximate number of pages;
2 and

3 (b) the identity of the person last known to have possession of
4 the document, together with the present or last known location of the document. If
5 any document was, but is no longer, in your possession, custody or control,
6 identify the document, state when and what disposition was made of it and the
7 reason for such disposition. In lieu of identifying documents, copies may be
8 provided.

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10 T Where not otherwise specified, the time period covered by these discovery
11 requests is from January 1, 2002 through the dates of your answers and responses to these
12 requests, including further supplementation of such answers and responses as appropriate.
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INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: Please identify all persons who assisted in responding to these interrogatories and requests for production

ANSWER:

INTERROGATORY NO. 2: Please identify all persons at Amazon involved in the decision to retain Sibson for the work it performed in 2002. As to each person, please (a) describe the knowledge he or she possesses; (b) describe his or her role in the decision to retain Sibson ; and (b) identify all documents relating to your answer.

ANSWER

INTERROGATORY NO. 3: Please identify all persons with knowledge concerning the work performed by Sibson for Amazon. As to each such person, please (a) describe the information he/she possesses; and (b) identify all documents relating to your answer

ANSWER:

INTERROGATORY NO. 4: Please identify all persons at Amazon involved in the decision to terminate Sibson from performing work for Amazon. As to each such person,

1 please (a) describe the knowledge he or she possesses, (b) describe his or her role in the
2 decision to terminate Sibson; and (c) identify all documents relating to your answer.

3 ANSWER

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7 INTERROGATORY NO. 5: Please identify all persons at Amazon involved in the
8 decision to hire any entity to complete or perform work relating to the work performed by
9 Sibson for Amazon. As to each such person, please (a) describe the knowledge he or she
10 possesses; (b) describe his or her role in the decision to hire another entity; and (c)
11 identify all documents relating to your answer

12 ANSWER

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16 INTERROGATORY NO. 6 Please identify all entities in addition to Sibson that
17 were considered by Amazon for the work awarded to Sibson in the year 2002, and identify
18 all documents relating to your answer.

19 ANSWER

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23 INTERROGATORY NO. 7: Please identify all persons at Amazon who reviewed
24 or considered other entities for the work awarded to Sibson in the summer of 2002, and as
25 to each, (a) identify the entity with which they are associated, and (b) identify all
26 documents relating to your answer

1 ANSWER:

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5 INTERROGATORY NO. 8 Please identify all entities that provided consulting
6 services to Amazon.com with whom Amazon.com disputed their billing statements and/or
7 practices. As to each, please (a) identify the person(s) at each such entity responsible for
8 communicating with Amazon.com concerning their billings, and (b) identify all
9 documents relating to your answer.

10 ANSWER:

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14 INTERROGATORY NO. 9 Please identify all lawsuits in which Amazon.com
15 has been named as a party relating to any allegation that it failed to pay for services for
16 which it contracted. As to each such lawsuit, please state:

- 17 a. The title of the lawsuit,
18 b. The court in which the lawsuit was filed;
19 c. The cause number;
20 d. The name of the attorney(s) representing each party; and
21 e. The result of the lawsuit.

22 ANSWER:

1 INTERROGATORY NO. 10: Please identify each person whom you expect to
2 call as an expert witness, and as to each, state the following:

- 3 a. The subject matter on which each expert identified is expected to testify;
4 b. State the substance of the facts and opinions on which each expert is
5 expected to testify,
6 c. Summarize the grounds for each such opinion;
7 d. Identify all data or other relevant information reviewed and/or considered
8 by the expert in forming any opinions,
9 e. Identify all documents provided to the expert;
10 f. List all publications authored by the expert within the past ten (10) years;
11 and
12 g. List any cases in which the expert has testified as an expert at trial or by
13 deposition within the preceding ten (10) years

14 ANSWER:

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20 **REQUESTS FOR PRODUCTION**

21 REQUEST FOR PRODUCTION NO 1: Please produce all documents identified
22 in your Answers to the foregoing Interrogatories.

23 RESPONSE.

1 REQUEST FOR PRODUCTION NO. 2 To the extent not previously identified
2 and produced in response to the foregoing Interrogatories and Request for Production,
3 please produce all documents relating in any manner whatsoever to Sibson and/or the
4 work performed by Sibson for Amazon.

5 RESPONSE

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7
8 REQUEST FOR PRODUCTION NO. 3: To the extent not previously identified
9 and produced in response to the foregoing Interrogatories and Request for Production,
10 please produce all documents relating in any manner whatsoever to communications
11 between Sibson and Amazon.

12 RESPONSE

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15 REQUEST FOR PRODUCTION NO. 4 To the extent not previously identified
16 and produced in response to the foregoing Interrogatories and Requests for Production,
17 please produce all documents relating to the decision by Amazon to retain Sibson to
18 provide the consulting services.

19 RESPONSE

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22 REQUEST FOR PRODUCTION NO. 5: To the extent not previously identified
23 and produced in response to the foregoing Interrogatories and Requests for Production,
24 please produce all documents relating to the decision by Amazon to terminate Sibson for
25 performing its consulting services.
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1 RESPONSE.

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4 REQUEST FOR PRODUCTION NO. 6: To the extent not previously identified
5 and produced in response to the foregoing Interrogatories and Requests for Production,
6 please produce all documents provided to Amazon from any other entity that was
7 considered for or attempted to procure the work eventually awarded to Sibson.

8 RESPONSE:

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11 REQUEST FOR PRODUCTION NO. 7 Please produce all documents provided
12 to Jeffrey Bezos relating to work performed by Sibson, the decision to terminate Sibson,
13 the decision to replace Sibson with another entity, and any communications concerning
14 the work Sibson performed for Amazon

15 RESPONSE:

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18 REQUEST FOR PRODUCTION NO. 8: Please produce all documents relating to
19 any analysis of the work performed by Sibson for Amazon.

20 RESPONSE.

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22
23 REQUEST FOR PRODUCTION NO. 9 Please produce all documents relating in
24 any manner whatsoever to any decision to hire a different consulting group to perform or
25 complete the services performed by Sibson for Amazon.
26

RESPONSE.

REQUEST FOR PRODUCTION NO. 10: Please produce all documents relating in any manner whatsoever to payments made to other entities for work related to that performed by Sibson

RESPONSE.

REQUEST FOR PRODUCTION NO. 11. Please produce all documents relating to Sibson's billings, including but not limited to, any analysis of such bills and the decisions to not fully pay those bills.

RESPONSE.

INTERROGATORIES AND REQUESTS FOR PRODUCTION DATED this _____ day of May, 2003.

McNAUL EBEL NAWROT HELGREN
& VANCE PLLC

By: _____
Robert M. Sulkin, WSBA No. 15425

Attorneys for Plaintiff

1 ANSWERS AND RESPONSES dated this ____ day of _____, 2003.

2
3
4 By: _____

5 Attorneys for Defendant Amazon.com, Inc.

6
7 CERTIFICATION

8 The undersigned attorney for defendant has read the foregoing *Plaintiff's First Set*
9 *of Interrogatories and Requests for Production Propounded to Defendant* and any
10 objections thereto, and the answers, responses and objections are in compliance with
11 CR 26(g).

12 By: _____

13
14 Attorneys for Defendant Amazon.com, Inc

1 VERIFICATION

2 STATE OF WASHINGTON)
3 COUNTY OF KING) ss.

4 On this _____ day of _____, 2003, before me, a Notary Public in
5 and for the State of Washington, personally appeared _____, the
6 _____ for defendant Amazon com, Inc., the party who executed
7 the within and foregoing instrument, and acknowledged that he or she was authorized to
8 execute such instrument on behalf of the same, and acknowledged said instrument to be
9 his or her free and voluntary act and deed for the uses and purposes therein mentioned

10 WITNESS my hand and official seal hereto affixed the day and year first as above
11 written.

12 Name _____
13 NOTARY PUBLIC in and for the State
14 of _____
15 Residing at _____
16 My appointment expires _____

17 [NOTARIAL SEAL]

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PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO DEFENDANT – Page 17

LAW OFFICES OF
McNAUL EBEL NAWROT HELGREN
& VANCE, P.L.L.C.
600 University Street, Suite 2700
Seattle Washington 98101-3143
(206) 467-1816

EXHIBIT C

DORSEY & WHITNEY LLP

FILE COPY

MINNEAPOLIS
SEATTLE
NEW YORK
WASHINGTON, D.C.
DENVER
LONDON
SOUTHERN CALIFORNIA
DES MOINES
SAN FRANCISCO
ANCHORAGE

U.S. BANK CENTRE
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101
TELEPHONE (206) 903-8800
FAX (206) 903-8820
www.dorseylaw.com

DAVID R. GOODNIGHT
(206) 903-8859
goodnight.david@dorseylaw.com

TOKYO
PALO ALTO
FARGO
SALT LAKE CITY
GREAT FALLS
HONG KONG
MISSOULA
TORONTO
SHANGHAI
VANCOUVER

June 3, 2003

VIA FACSIMILE AND POSTAL SERVICE

Robert M. Sulkin
McNaul Ebel Nawrot Helgren & Vance
600 University Street, Suite 2700
Seattle, Washington 98101-3143

Re Segal Co. v. Amazon.com

Dear Mr. Sulkin:

We represent Amazon.com.

I am writing to request that Segal immediately dismiss its fraudulent misrepresentation and Consumer Protection Act claims, which Segal cannot in good faith allege. There is no justification for bringing these claims.

The dispute between Amazon.com and Segal is relatively straightforward, and such baseless claims only serve to increase litigation costs. Amazon.com should not have to incur the expense of litigating such claims, and the Court should not have to expend the time necessary to resolve them.

Under Rule 26(d), a party may not seek discovery until after the Rule 26(f) conference. Therefore, Segal also should withdraw its discovery requests.

Please let me know on or before June 6th whether Segal will voluntarily dismiss its fraudulent misrepresentation and CPA claims, and whether Segal will withdraw its discovery requests.

DORSEY & WHITNEY LLP

Robert M. Sulkin
June 3, 2003
Page 2

Very truly yours,

DORSEY & WHITNEY LLP



David R. Goodnight

Enclosure Notice of Appearance

cc David A. Zapolsky

EXHIBIT D

LAW OFFICES OF
MCNAUL EBEL NAWROT HELGREN & VANCE
A PROFESSIONAL LIMITED LIABILITY COMPANY

TYLER B. ELROD
BARBARA HALLOWELL
MICHAEL D. HELGREN
JERRY R. MCNAUL
JOUS F. NAWROT, JR.
ROBERT D. STEWART
ROBERT M. SULKIN
CYRUS K. VANCE, JR.
PETER M. VIAL
MARC O. WINTERS

600 UNIVERSITY STREET SUITE 2700
SEATTLE, WASHINGTON 98101 3143
FACSIMILE (206) 624-5128
(206) 467 1816

ROBERT C. FARRELL
MICHELLE A. GAIL
TIMOTHY G. GIACOMETTI
LESLIE J. HAGIN
GREGORY J. HOLLON
NANCY G. STEPHENSON

OF COUNSEL
ROBERT S. KLEIN
GREGORY C. HARVEY
BARBARA H. SCHUKNECHT

June 3, 2003

VIA FACSIMILE

Mr. David R. Goodnight
Dorsey & Whitney LLP
1420 Fifth Avenue, Suite 4200
Seattle, Washington 98101

Re: *The Segal Company and Sibson Consulting ("Segal/Sibson") v. Amazon.com, Inc.*


Dear David:

I am writing in response to your letter of June 3, 2003. Like you, I would like to keep litigation costs to a minimum. In that regard, I do agree with you that baseless claims can only serve to increase litigation costs. In the same spirit, however, I assume that you would agree that baseless defenses also increase litigation costs, and you will admit that Amazon.com does owe Segal/Sibson a significant amount of money. With that in mind, I look forward to Amazon.com's answer to the complaint.

I would be more than happy to discuss with you the Consumer Protection Act allegations and the claim for fraudulent misrepresentation. Please call me at your earliest convenience.

Lastly, there is no need for Segal/Sibson to withdraw its discovery requests, since none have been made. As I explained in my May 23, 2003 letter to Zane Brown, I was sending the discovery requests as a "roadmap" for Amazon.com to understand the types of documents I believe it needs to produce under Rule 26(d).

Sincerely,



Robert M. Sulkin

RMS:rml
cc: The Segal Company